

# Notice of Allowability

Application No.

10/090,124

Examiner

Michael I Poe

Applicant(s)

LEVIJOKI, PETER

Art Unit

1732

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the original application filed on March 5, 2002.
2. ☒ The allowed claim(s) is/are 10 and 11 (renumbered 1 and 2, respectively).
3. ☒ The drawings filed on 05 March 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 20020305
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 20040129.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

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## EXAMINER'S AMENDMENT

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn to a hand tool for decorating a substrate, classified in class 118, subclass 212.
  - II. Claims 10 and 11, drawn to a method of decorating a substrate, classified in class 264, subclass 259.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions of Group II and Group I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process such as a process of decorating a wall by painting wherein a painting compound is only applied to the raised surfaces surrounding the relief pattern and is not forced into the cavities of the relief pattern unit.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with applicant's attorney Donald Schoonover on January 28, 2004, a provisional election was made with traverse to prosecute the invention of Group II, claims 10 and 11. Claims 1-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. In order to expedite allowance of the elected invention, the applicant's attorney agreed to cancellation of the non-elected claims, claims 1-9, without prejudice on January 29, 2004 as noted below.

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**Authorization**

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with applicant's attorney Donald Schoonover on January 29, 2004.

**Amendments**

6. The application has been amended as follows:

The title has been changed to -- A METHOD OF FORMING SCULPTURED DESIGNS ONTO A SUBSTRATE --.

Claims 1-9 have been cancelled without prejudice as being drawn to a non-elected invention.

The abstract has been amended as follows:

line 1,	"A" has been deleted before "hand" and -- A method of forming sculptured designs onto a substrate using a -- has been inserted before "hand"; and
lines 11 and 12,	"A method of forming the sculptured design is also disclosed." has been deleted after "substrate."

**Examiner's Statement(s) of Reasons for Allowance**

7. The following is an examiner's statement of reasons for allowance:

- (1) Although processes for decorating substrates by applying compounds such as plaster, drywall-type compositions, paint and the like thereto by hand (see for example U.S. Patent No. 4,257,140 to Downing and U.S. Patent No. 4,105,816 to Hori) are generally known in the art, none of the prior art of record teaches or suggests using a hand tool having the structure defined in step a) of claim 10.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael I. Poe whose telephone number is (571) 272-1207. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.



Michael Poe/mip  
January 29, 2004



**MICHAEL COLAIANNI**  
**PRIMARY EXAMINER**